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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,664	09/13/2001	Claudine Lamblin	F1165(V)	7415

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UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

EXAMINER	
TRAN LIEN, THUY	
ART UNIT	**PAPER NUMBER**
1761	

DATE MAILED: 02/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/889,664	LAMBLIN ET AL.
	Examiner	Art Unit
	Lien T Tran	1761

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 September 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

4a) Of the above claim(s) *8-10* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-7, drawn to a method of preparing a powder mixture.

Group II, claim(s) 8-10, drawn to an extruder.

The inventions listed as Groups I & II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The method of Group I does not require the technical features such as the extrusion grid having conformation, density, aperture with detent portion and enlarged section and apertures with the dimension claimed in the invention of Group II.

During a telephone conversation with Edward Squillante on Jan. 23, 2004 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-7. Affirmation of this election must be made by applicant in replying to this Office action. Claims 8-10 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is vague and indefinite because the claims only recite the parameter of the fat but does not recite the step of the method. It is not known how the method is carried out. The body of the claim does not commensurate with the preamble; there is no recitation of steps of preparing a powder mixture. On line 2, the phrase " by pouring a liquid" is indefinite because it is not clear if this is a step of the method of preparing a powder mixture or a step in the preparation of a cake mixture. Also, on line 2, the term " the mixture" is unclear because it is not known if this refers to the powder mixture or the cake mixture recited on line 1.

Claim 3 is vague and indefinite; it is not known what applicant is trying to claim. What does applicant mean by the fat is interrupted cyclically during periods of safeguarding the homogeneity. Also, it is not clear what mixture the claim is referring to.

In claim 4, the term " the ingredients" is unclear because it is not known what ingredients the claim is referring to; also, it is not clear what mixture the claim is referring to.

Claim 5 has the same problem as claim 4.

In claim 6, is "a fat" the same fat referred to in the previous claims or a different fat; if " a fat" is the same as in previous claims, it is suggested applicant use " the or said" to make the claim clearer.

Claim 7 has the same problem as claim 6. Additionally, the phrase " low percentage of solid fraction" is indefinite because " low" is a relative term; what would be considered as " low"?

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colson et al.

Colson et al disclose a process of making a powder mixture. The mixture comprising a base powder and a fat. The base powder comprises flour, a leavening agent, emulsifier and a protein source. The fat used has a melting point around 90-104 degree F (32-40 degree C) and a higher initial solid content about 61% at 50 degree F.

The fat in mixed with the base powder in the form of a plastic, chip or noodle or any combination. For example, harden plastic shortening may be extruded through a pipe using a Graco pump having a die used to form shortening noodles or pellets. The noodles or pellets are then added to the mixer along with the other dry ingredients. The noodles are broken up is smaller chunks during the mixing and dry blending processes. (see columns 2, 4 and 5)

Colson et al do not disclose introducing the fat into the base powder cold, interrupting the fat cyclically as in claim 3, conveying the ingredients upward during the mixing as in claim 4, horizontal rotary movement as in claim 5 and the melting point curve as in claim 7.

While Colson et al do not disclose the fat is extruded cold or adding into the powder cold, it would have been obvious to extrude the fat cold and adding the fat cold in order to keep it in solid form. Colson et al disclose the fat is added to the ingredients of the mix as noodles or pellets. With respect to claim 3, it is interpreted that the fat is added in portion and not all at once, it would have been obvious to add the fat in several small portion to ensure that the fat is blended thoroughly with the other ingredients of the mix. This practice is common and well known in the art. For example, in recipe for cookies and cakes, it is always called for adding the dried ingredients to the fat mixture in several small increments and to blend the ingredients well after each adding. As to the mixing parameters, this can readily be determined by one skilled in the art through routine experimentation to obtain the most optimum mixing. The direction of the mixing is also determined by the mixing equipment used and this can vary, Colson et al

disclose the fat has a melting point around 90-104 degree F; thus, it would have been obvious to use a fat with melting point a little below 90 degree F. This would have been an obvious matter of choice. The selection is not significant as long as the melting point does not deviate greatly from the range disclosed. For example, the specification discloses a melting point of lowerthan 32 degree C, but fat with a melting point lower than 37 degree C can also be used. As to the solid fraction, the claim as well as the specification do not define what would be considered as low. Since, the fat disclosed by Colson et al has a melting point very close to the claimed fat, it is obvious point curve is similar to the one claimed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Johannes disclose a dry mix for glazed cake.

Franssell et al disclose a dry mix for microwave muffins.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 6, 2004

LIEN TRAN
PRIMARY EXAMINER
Group 1700